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George Mahaffey Jr.

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Bentley v. Carroll**Jury Instructions Stating that Statutory Violations Are Evidence of Negligence Are Permissible**

By George Mahaffey, Jr.

The Court of Appeals of Maryland held that a medical patient was entitled to a jury instruction stating that the violation of a statute may be considered evidence of negligence. *Bentley v. Carroll*, 355 Md. 312, 734 A.2d 697 (1999). Moreover, the court concluded that when a jury is determining causation in a medical malpractice case, it may consider non-expert as well as expert medical testimony. The court of appeals also held that an expert may not offer an opinion as to the truthfulness of a party, but may only offer an opinion based on the facts sufficient to show the basis for that opinion.

Beginning in 1978 and continuing until 1988, then two-year old Christine Ann Bentley ("Bentley") received medical treatment from Dr. Alan Carroll ("Carroll") and the late Dr. George L. Morningstar for a series of afflictions including urination problems and vaginal inflammation. During this same ten-year period, Bentley had allegedly been sexually abused by her mother's boyfriend on a regular basis.

In 1996, Bentley filed suit against Carroll, the estate of George L. Morningstar, and Morningstar and Carroll, P.A., in the Circuit Court for Frederick County, alleging medical malpractice. Bentley claimed that Carroll breached the standard of

medical care by failing to report, as required by Article 27, section 35A of the Maryland Annotated Code that the sexual abuse of a child was possibly occurring. Bentley proposed the jury instruction that violation of a statute could be considered evidence of negligence which the trial court refused. The jury returned a verdict in favor of Carroll, and a timely appeal was noted to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland, *sua sponte*, granted certiorari.

The court of appeals began its analysis by examining Article 27, section 35A of the Maryland Annotated Code, Maryland's Child Abuse Act, and Bentley's proposed jury instruction. *Bentley*, 355 Md. at 318, 320, 734 A.2d at 701-02. In examining Bentley's proposed instructions in conjunction with Maryland Rule 2-520, the court opined that a requested jury instruction should be given only if (1) the instruction correctly states the law; (2) the matter at issue is not fairly covered by an instruction already given; and (3) the law is applicable in light of the evidence before the jury. *Id.* at 324-25, 734 A.2d at 704 (citing *Holman v. Kelly Catering*, 334 Md. 480, 639 A.2d 701 (1994)). After applying this standard to Bentley's proposed instruction, the court rejected Carroll's argument that it would be

inappropriate to include section 35A in a jury instruction. *Id.* at 326, 734 A.2d 705. Rather, the court of appeals found that the trial court erred, in that Bentley's proposed jury instruction should have been given. *Id.* The court of appeals concluded Bentley's proposed instruction was legally accurate and its inclusion of section 35A was appropriate given the evidence in the instant case. *Id.*

Before continuing, the court noted that it could have remanded the case solely on the jury instruction error, but in the interest of providing guidance for future parties, it would address the other issues raised by Bentley. *Id.* at 329, 734 A.2d at 707. The court then considered whether the jury should have been instructed that it could consider non-expert, as well as expert testimony, in determining causation. *Id.* at 329-30, 734 A.2d at 707. The court found that an instruction to a jury is erroneous if it restricts evidence that tends to establish material facts. *Id.* at 331, 734 A.2d at 708 (quoting *Singleton v. Roman*, 195 Md. 241, 72 A.2d 705 (1950)). Therefore, the court of appeals held in the instant case, that the trial judge improperly limited the scope of deliberations by only allowing the jury to consider expert testimony in determining causation. *Id.* The court concluded that the jury should have been

permitted to consider non-expert material such as interrogatories and depositions which may have shed light on material facts in the case. *Id.*

The court of appeals then examined whether the trial court erred in not striking the testimony of an expert witness who called into question the victim's veracity. *Id.* at 332, 734 A.2d at 708-09. The expert testified that based on the results of a professionally accepted test, Bentley exhibited no signs of an individual who had suffered sexual abuse and may have exaggerated her symptoms. *Id.* at 333, 734 A.2d at 709. The expert further stated that he based his conclusions on the Minnesota Multiphasic Personality Inventory ("MMPI") test which functioned as a "mini truth, or lie detector . . ." *Id.* The court noted that in Maryland, courts are not the proper forum for the introduction or interpretation of devices that measure a witness's veracity. *Id.* at 334, 734 A.2d at 709 (citing *Guesfeird v. State*, 300 Md. 653, 480 A.2d 800 (1984)). The court additionally stated that Maryland courts have consistently held that an expert witness may not give his opinion as to the truthfulness of a witness. *Id.* at 334, 734 A.2d at 709-10 (citing *Bohnert v. State*, 312 Md. 266, 539 A.2d 657 (1988)). In the instant case, the court held Carroll's expert's reliance on what he perceived to be a "truth detector," coupled with his comments as to the veracity of Bentley, were impermissibly prejudicial and thus, inadmissible as a matter of law. *Id.* at 335, 734 A.2d at 710.

Finally, the court addressed

whether Bentley's expert's opinion that Bentley's injuries were the result of sexual abuse was admissible. *Id.* The court first noted that an expert witness may not offer an opinion based solely on the complainant's version of the cause of his or her injuries. *Id.* at 330, 734 A.2d at 710 (citing *Bohnert v. State*, 312 Md. 266, 539 A.2d 657 (1988)). Rather, the expert opinion must be based on facts that sufficiently show the basis for their opinion. *Id.* In the instant case, the court of appeals found that the expert witness based his opinion on facts that were insufficient to support his testimony. *Id.* at 336, 734 A.2d at 711. As a result, his testimony that Bentley's injuries were the result of sexual abuse impermissibly bolstered the credibility and argument of Bentley. *Id.* at 338, 734 A.2d at 712.

The court of appeals's holding in *Bentley* supports the rights of those seeking redress for sexual abuse. The court clearly articulated that abuse victims are entitled to a jury instruction that considers a violation of Maryland's Child Abuse Act as evidence of negligence. This decision will make it easier for victims to show a breach of the standard of care by physicians, in that it expands the amount of evidence that juries can consider. In addition, juries will not be restricted solely to considering expert testimony, but will be allowed to consider non-expert testimony that might emotionally swing a jury.